

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1210 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE R.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JASHBHAI N PATEL

Versus

STATE OF GUJARAT

Appearance:

MR GIRISH PATEL for Petitioner
MR JOSHI,AGP for Respondent No. 1
MR RJ OZA for Respondent No. 3

CORAM : MR.JUSTICE R.A.MEHTA

Date of decision: 27/04/98

ORAL JUDGEMENT

1. The petitioner who was a Translator prays for regularisation and relaxation.

2. The petitioner was given an ad-hoc temporary appointment as a Translator. His ad-hoc appointment was after following the procedure i.e. calling names through Employment Exchange, holding written test and interview

by the Selection Committee. He continued in this post from 1983. On 16.10.1984, his service was sought to be terminated. However, he had filed Special Civil Application No. 5325 of 1985 and interim relief was granted against his termination and he continued in service.

3. In the meanwhile, new recruitment rules came into force in 1986. GPSC advertised posts of Translator. The petitioner also applied for the same. 9 candidates were put on the select list and the petitioner who was also found suitable was put on the waiting list at Sr.No. 7. One person from the waiting list and all persons from the select list were offered appointment.

4. When that petition came up for hearing in 1992, the Division Bench of the High Court, by its judgment dated 5.11.1993, taking note of the factual position as on the date of hearing, found that out of the five petitioners, three had resigned; one had obtained the benefit of regular appointment through GPSC and only the present petitioner was left out and he was placed in the select list and was not given regular appointment.

5. The Division Bench observed :

"We are convinced that in respect of the regular appointment, coveted by petitioner no.5, the question could be looked into by the respondents nos. 1 and 2 on a representation being made by petitioner no.5 therefore and in the meanwhile, the present position viz. the employment of petitioner no.5 on ad hoc basis, could be continued without any disturbance and for an appropriate time after a decision is rendered by respondent nos.1 and 2 and communicated to petitioner no.5."

Accordingly, the present petitioner was directed to make written representation for regular appointment within four weeks and the respondents were directed to decide the said representation and communicate the decision to the petitioner, and meanwhile the ad-hoc appointment was continued and was continued further for four weeks from the date of communication of the result of the representation.

6. The petitioner made his representation on 29.12.1992 and it was rejected on 7.1.1994 by one line order that the petitioner's representation was not accepted by the Government. However, in the meanwhile,

on expiry of the period of making representation, his service was terminated.

7. Against the order of rejection of his representation, the present petition is filed.

8. The learned Counsel for the petitioner has submitted that the respondents have failed to give any reason whatsoever for rejecting the representation. The Division Bench of the High Court had appreciated all aspects and facts and directed the respondents for consideration for regularisation of the petitioner presumably on the ground that the power of regularisation is wide and discretionary power and it is the Governmental function and the Government would be the right authority to exercise that power rather than the High Court under Article 226 of the Constitution of India. The Government can take into consideration the special circumstances of a case and consider the question of relaxation and take appropriate decision in the facts of the case rather than a mere technical view. The fact that the Division Bench considered it fit to protect the petitioner even after the representation was decided against him indicated that the petitioner had a good case for consideration of representation. However, the result is that the Government has rejected the representation by a single line order.

9. In the affidavit-in-reply filed by the Government, the stand taken is the same as if the petitioner is claiming appointment according to the rules and that the appointment could not be made according to rules. The very fact that the regularisation and relaxation is claimed, necessarily shows that there is some element is lacking for giving the regular appointment, but the element which is lacking requires to be considered for condonation and relaxation in the facts of the case. It is with this view that the Division Bench had directed consideration of the petitioner's case for regularisation. The Government has wholly missed this element and the spirit of the direction for considering the representation.

10. During the pendency of the present petition, when this petition was admitted on 19.7.1995, the High Court had observed that it would be open to the respondent State Government and its authority to reconsider the petitioner's case in light of the peculiar facts of his case and in light of the fact that the petitioner's qualifications are M.A., Ph.D.

11. On 16.1.1996, the Court had also taken note of the fact that in February 1995, there were 12 vacant posts of Translators, but the learned AGP had submitted that there was economy drive and, therefore, no appointment could be made. An objection was also raised that GPSC was not made a party and, therefore, the GPSC was also made a party respondent and Mr.R.J.Oza, learned advocate is appearing for the GPSC.

12. It is true that the petitioner has not been put in the select list of translators by GPSC and he has not been given regular appointment. If this were to be conclusive, that will be the end of the matter. However, the further and special facts in the case of the petitioner are that he has been found suitable by GPSC and put in the waiting list. He is holding the qualifications of M.A.,Ph.D. He has served the department from 1984 to 1992 for eight years as a translator. His original selection was not a back-door entry, but after calling for names from the Employment Exchange, holding written test and interview by the Selection Committee, he was appointed. He is qualified according to rules and he is found suitable by the GPSC. The vacant posts are available. On consideration of all these facts, a clear case is made out for serious consideration for either regularising the appointment or giving him a fresh regular appointment or giving him further opportunity to get selected by GPSC by getting appropriate relaxation in age. The respondents have not applied mind to any of these aspects. The High Court may have limitations on exercising power under Article 226 of the Constitution of India having regard to executive sphere of the Governmental functions which appropriately belongs to the executive branch and, therefore, the High Court cannot direct the respondents to give a regular appointment or to relax the age and regularise the appointment, but the High Court can certainly issue directions to the respondents to consider the case of the petitioner in exercise of its power to regularisation and relaxation if it is satisfied that this was a fit case for regularisation.

13. In the result, the petition is partly allowed by directing the respondents to consider afresh the case of the petitioner for regularisation and relaxation and to give him appropriate relief and orders as the respondents may deem proper in the facts and circumstances of the case. The respondents shall take such fresh decision within three months from today. It would be open to the petitioner to make a written representation to the respondents within one month from today. The petitioner

does not claim any arrears or backwages for the
interregnum.

Rule made absolute accordingly with no order as
to costs.

mhs/-